TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

CORRECTED FISCAL MEMORANDUM

HB 2145 – SB 2132

May 10, 2010

SUMMARY OF AMENDMENTS (015660, 017889): Amendment 015660 changes the effective date of the bill from January 1, 2010, to January 1, 2011. Amendment 017889 rewrites Section One of the original bill. The Department must notify a provider who is in breach of a contract to participate in the child care certificate program within 30 days prior to the Department terminating the contract or withholding more than 25 percent of the provider's average monthly compensation for the lesser of the preceding 12 months or the total number of months the provider has participated in the program. Authorizes the provider to file a complaint with the Tennessee Claims Commission if the provider disagrees with the Department's proposed action and requires the Claims Commission to hold an expedited hearing within 30 days of the provider's filing in order to determine whether the provider has breached the contract. The Department cannot take the proposed termination or withholding action until the Claims Commission determines that the provider has committed a material breech of contract.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - $7,500/One-Time
$190,800/Recurring

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

On April 27, 2010, a fiscal memorandum was issued for this bill as amended indicating *a not significant increase in recurring state expenditures*. Based on additional information received from the Department of Human Services, the fiscal impact for this bill as amended is as follows:

(CORRECTED)

Increase State Expenditures – Not Significant

Other Fiscal Impact – The Department of Human Services (DHS) will be required to continue payments to a contracted provider of at least 75 percent of the provider's compensation during the 30-day prior notice period and during the Claims Commission's hearing and determination period, if the contractor decides to file a complaint with the Commission. If these extended payments are determined to be disallowed federal payments, DHS will have to return the federal funds that have been paid during that time. The repayment

of federal funds will be from state funds if DHS is not able to collect all of the money from the provider. Due to a number of unknown factors, it is not possible to determine an exact amount but it is reasonable to estimate that any contract that payments are extended for disallowed payments could result in an increase in state expenditures exceeding $50,000 if DHS is not able to recoup the disallowed funds.

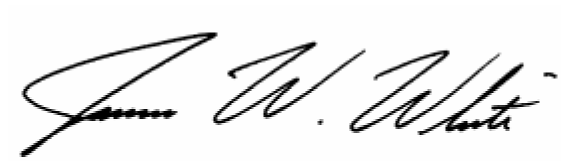
Assumptions applied to amendments:

- Changing the effective date will not change the fiscal impact of the original bill.
- The Department estimates approximately 75 policy and guideline changes are issued annually. The bill as amended will require a fiscal impact assessment to be completed on each of the changes.
- Current staff will be responsible for researching and preparing the final fiscal impact assessments for submission.
- Any cost incurred by DHS for staff to perform the required fiscal estimates of rule and policy changes can be accommodated within existing resources without an increased appropriation or reduced reversion.
- Currently, a child care provider who contracts with DHS can appeal any termination of the contract with the Claims Commission. The provisions of the bill authorize an expedited hearing within 30 days. It is assumed that decreasing the amount of time for a claim to be investigated and heard by the Claims Commission will not have a significant increase in state expenditures.
- The DHS will be delayed in taking any type of termination or withholding action against the provider for at least 30 days or possibly longer if a provider submits a claim with the Claims Commission.
- It is estimated that the provisions of the bill will not result in a significant increase in the number of providers who submit claims to the claims commission.
- Currently, there is approximately $1,437,824 in child care provider payments from 97 providers that have been identified as disallowable according to federal auditing standards and is due the Department.
- According to DHS, the majority of disallowed payments are returned to the state through repayment plans that are worked out between DHS and the provider.
- There are certain occasions when the Department terminates the contract or withholds compensation from the provider. There have been two of these situations in the past three years.
- The last provider contract that DHS terminated was due to fraudulent activity and totaled approximately $45,800 in disallowable cost. The provider contract terminated prior to that totaled $11,997 in disallowable cost. According to the Department, none of the total $57,797 was able to be recouped. If DHS would have continued payments for an additional 30 days or more, this amount would be increased. An exact amount of the increase is not able to be determined.

- If the Department is not able to recoup these disallowable payments from the provider, state funds will have to be used to reimburse the federal funds. With the previous two provider contract terminations, DHS was responsible for reimbursing approximately $57,797 to the federal funds.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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